

O'MELVENY & MYERS LLP
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Attorneys for Plaintiff
APPLE COMPUTER, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MICROSOFT CORPORATION, a Washington
Corporation,
APPLE COMPUTER, INC., a California
corporation,
HEWLETT-PACKARD COMPANY, a
Delaware corporation, and
NETGEAR, INC., a Delaware corporation,

Plaintiffs,

v.

COMMONWEALTH SCIENTIFIC AND
INDUSTRIAL RESEARCH
ORGANISATION,

Defendant.

Case No. C05 01894 CW

**STIPULATION AND [PROPOSED]
ORDER SEVERING AND STAYING
PLAINTIFF APPLE COMPUTER,
INC.'S ACTION AGAINST
DEFENDANT COMMONWEALTH
SCIENTIFIC AND INDUSTRIAL
RESEARCH ORGANISATION**

DENYING

Apple Computer Inc. ("Apple") and Commonwealth Scientific And Industrial Research Organisation ("CSIRO"), through their respective counsel, hereby stipulate to entry of an order severing and staying Apple's complaint against CSIRO for the following reasons and upon the following terms and conditions:

WHEREAS, plaintiffs Apple, Microsoft Corporation, Hewlett-Packard Company, and Netgear, Inc. filed this action against CSIRO on May 9, 2005 seeking declaratory and other relief related to U.S. Patent No. 5,487,069 ("the '069 patent");

1 WHEREAS, in CSIRO v. Buffalo Technology (USA), Inc., and Buffalo Inc. pending in the US
2 District Court for the Eastern District of Texas case number 2-05CV-53 LED also involving the '069
3 patent, Townsend and Townsend and Crew LLP ("Townsend") represents CSIRO;

4 WHEREAS, Townsend is counsel of record for Apple in various trademark matters, and
5 therefore Townsend has a conflict in representing either CSIRO or Apple in the present case;

6 WHEREAS, Apple and CSIRO have reached an agreement to sever the present action as to
7 Apple, and stay Apple's severed action pending resolution of the present action by plaintiffs
8 Microsoft, Hewlett-Packard, and Netgear;

9 WHEREAS, under the circumstances and facts currently available to Apple, Apple does not
10 object to Townsend representing CSIRO in the present action against plaintiffs Microsoft, Hewlett-
11 Packard, and Netgear after the Court has severed the present action as to Apple.

12
13 NOW, THEREFORE the parties to this action, and their respective counsel of record hereby
14 stipulate and request entry of the following order:

15 The present action filed by Plaintiff Apple against defendant CSIRO shall be severed into a
16 separate action, and said severed Apple action shall be stayed pending final resolution of the present
17 action by plaintiffs Microsoft Corporation, Hewlett-Packard Company, and Netgear, Inc.

18 IT IS SO STIPULATED.

19
20 DATED: May 26, 2005

By: 

Mark C. Scarsi
O'MELVENY & MYERS LLP
400 South Hope Street
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Attorneys for Plaintiff
APPLE COMPUTER, INC.

1 DATED: May 26, 2005

By: 

Daniel J. Furness

TOWNSEND AND TOWNSEND AND CREW LLP

379 Lytton Avenue

Palo Alto, CA 94301

Telephone: (650) 326-2400

Facsimile: (650) 326-2422

Attorneys for Defendant

COMMONWEALTH SCIENTIFIC AND

INDUSTRIAL RESEARCH ORGANISATION

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8 DENIED WITHOUT PREJUDICE. ABSENT SOME FURTHER EXPLANATION, THIS
SOLUTION DOESN'T APPEAR CONSISTENT WITH JUDICIAL EFFICIENCY.

9 **IT IS SO ORDERED.**

10 DATED: May 31 2005

/s/ CLAUDIA WILKEN

11 Honorable Claudia Wilken

12 Judge of the United States District Court

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ORGANISATION,

Defendant.

Case No. C05 01894 CW

**DECLARATION OF MARK C.
SCARSI RE: SIGNATURE
PURSUANT TO GENERAL
ORDER 45 § X**

1 I, MARK C. SCARSI, declare as follows:

2 1. I am an attorney at the law firm of O'Melveny & Myers LLP, counsel of record for Plaintiff
3 Apple Computers, Inc., in the action entitled *Microsoft Corporation, et al v. Commonwealth Scientific*
4 *and Industrial Research Organisation*, Case No. C05 01894 CW, pending before this Court. I am a
5 member of good standing of the State Bar of California and am admitted to practice in the United
6 States District Court for the Northern District of California. I have personal knowledge of the facts set
7 forth in this Declaration and, if called as a witness, could and would testify competently to such facts
8 under oath.

9 2. I attest that the signature of Daniel J. Furniss, counsel of record for Defendant Commonwealth
10 Scientific and Industrial Research Organisation, appearing in the signature block of the Stipulation and
11 [Proposed] Order Severing and Staying Apple Computer, Inc.'s Action Against Defendant
12 Commonwealth Scientific and Industrial Research Organisation, is Mr. Furniss' signature, and that
13 Mr. Furniss has authorized me to file the Stipulation and [Proposed] Order.

14 Executed on the 26th day of May, 2005, at Los Angeles, California. I declare
15 under penalty of perjury under the laws of the United States that the foregoing is true and
16 correct.

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18 //s// Mark C. Scarsi
19 Mark C. Scarsi
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